UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CONSORZIO DEL PROSCIUTTO DI SAN DANIELE,	)	
Plaintiff,	)	C.A. No. 07-039ML
	)	
v.	)	
	)	
DANIELE, INC.,	)	
Defendant.	)	

PLAINTIFF'S LOCAL RULE 56(C) STATEMENT OF FACTS IN DISPUTE FOR PURPOSES OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Local Rule 56(c), Plaintiff hereby submits its statement of those facts relied upon by Defendant in its Cross-Motion for Summary Judgment that are either disputed or immaterial. These disputed facts are stated in separate numbered paragraphs that correspond to the extent possible with the numbering of the paragraphs in Defendant's statement of facts claimed not to be in issue.

1. Immaterial.

2. Immaterial.

3. Immaterial.

4. Immaterial.

5. Immaterial.

6. Immaterial.

7. Immaterial.

8. Immaterial.

9. Immaterial.

10. Disputed. Daniele International, Inc. also sells prosciutto on the Internet, directly through its own Web site and through third parties. **Pl. Exs. 14, 23**.

11. Disputed. Daniele International, Inc. also sells a filet of prosciutto that is not a whole thigh or pre-sliced, under the designation, "DELI-CUT-O." **Pl. Exs. 13, 27**. In addition, as to the weight and price of Defendant's goods, if the Court rules for Defendant on the meaning of paragraph 5, Plaintiff has the right to discovery to determine the accuracy of this statement and the nature and other characteristics of Defendant's prosciutto products. These facts are material to the issue of the validity of Defendant's alleged trademarks and whether they are grade or style designations.

12. Disputed. The settlement agreement of August 6, 2003 was intended to resolve not only the dispute relating to the application for registration of the DANIELE trademark by Defendant. It was also intended to resolve the claim by Plaintiff that Daniele International, Inc. was misusing its DANIELE trademark to cause confusion and to trade on the name of San Daniele. Complaint ¶¶ 14-23; Def. Ex. A p. 7.

13. Plaintiff disputes any implication that the settlement agreement of August 6, 2003 was not negotiated by responsible officials of both parties.

14. Plaintiff disputes any implication that Daniele International, Inc. did not have every opportunity to have its attorneys review or draft any part of the settlement agreement of August 6, 2003.

15. Disputed. Daniele International, Inc. filed its lawsuit in Rhode Island state court. The case was removed to U.S. District Court.

17. Plaintiff disputes the implication that Daniele International, Inc. has voluntarily stopped all use of the Daniele trademark for the sale of prosciutto. See e.g. **Pl. Exs. 7-12, 14, 22-25**.

18. Disputed. The alleged trademarks are not valid trademarks. Pl. Obj. Mem. 9-19; **Pl. Exs. 2, 17-19**; Def. Ex. A, p. 18. In the event the Court agrees with Defendant's interpretation of paragraph 5, Defendant does not say what products the alleged trademarks are used on. Plaintiff has a right to discovery to determine what trademarks Defendant is using for the sale of prosciutto, the precise products on which the alleged trademarks are used, and the alleged dates of first use.

19. Plaintiff denies any implication that Defendant's labels were corrected promptly or voluntarily, that the labels complied with the settlement agreement, or that Plaintiff approved the labels.

20. Plaintiff denies any implication that Defendant's applications for registration of its alleged trademarks were in good faith. By Defendant's own admission, they were not filed until after this lawsuit was filed.

21. Disputed. On Defendant's label for its prosciutto sold as a whole thigh, the letters of the "Daniele, Inc." trade name were more than one-fourth the size of the word "President's." Defendant did not correct this until May 7, 2007, after the filing of this lawsuit. Pl. Obj. Mem. 22-23; Def. Ex. A pp. 22, 32; **Pl. Exs. 20, 21**.

22. Plaintiff denies the implication that Exhibit A to the settlement agreement was an exemplar for Defendant's trademarks. The sole purpose of Exhibit A was as an exemplar of Defendant's logo. There was no agreement on a specific trademark to be used by Defendant. Settlement agreement ¶ 6. Plaintiff denies that the alleged trademarks are valid trademarks. Pl. Obj. Mem. 9-19; **Pl. Ex. 2, 17-19**; Def. Ex. A p. 18. Plaintiff also denies the implication that Defendant's alleged trademarks complied with the requirements of the settlement agreement.

23. Disputed. Daniele International, Inc. did not voluntarily modify all of its labels to indicate prominently that the goods were made in the U.S.A. as required by paragraph 7 of the settlement agreement. It claimed to have modified its labels only as of February 21, 2007, after the filing of this lawsuit. Plaintiff needs discovery to determine the extent to which Defendant was or is in violation of paragraph 7. **Pl. Ex. 22**.

24. Plaintiff denies that Defendant's modified brochure satisfies Plaintiff's concerns. For example, it does not use a valid trademark for its line of prosciutto. Pl. Obj. Mem. 9-19; **Pl. Ex. 13**.

25. Disputed. The Daniele International, Inc. Web site on January 29, 2007 called for "Daniele, Inc. Prosciutto" in recipes. The Spanish version of the Web site advertised "Daniele prosciutto ham" on July 24, 2006. **Pl. Ex. 24**. Defendant is still using "Daniele prosciutto" in the metatags on its Web site to attract consumers. **Pl. Ex. 25**. Plaintiff also disputes any implication that Defendant is absolved of responsibility for its Web site simply because it is operated by a third party.

26. Immaterial.

27. Immaterial.

/s/ Matthew F. Medeiros
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Dated: July 2, 2007 **Counsel for Plaintiff/Counterclaim Defendant**

CERTIFICATION

I hereby certify that on July 2, 2007, a copy of the foregoing Plaintiff's Local Rule 56(C) Statement Of Facts In Dispute For Purposes Of Defendant's Motion For Summary Judgment was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system, or by e-mail or to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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